

³ See 47 C.F.R. § 52.15(f)(3)(ii). See also, *NRO Order*, 15 FCC Rcd at 7594; *NRO Recon. Order*, 15 FCC Rcd at 353-54.

which requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"), a Pooling Administrator, or another telecommunications carrier, to report semiannually on their actual and forecast number usage.⁴

3. NATC responded to the *NAL*, and stated that in order to reorganize, it had filed for Chapter 11 bankruptcy protection on February 23, 2001. NATC requested that the proposed forfeiture be dismissed based on bankruptcy filing, or, in the alternative, that it be given additional time to respond. We extended the period for NATC to respond to the *NAL* to June 25, 2001. However, NATC did not file a further response.

III. DISCUSSION

4. The *NAL* states that the proposed forfeiture was assessed in accordance with applicable statutory provisions, the Commission's rules and the Commission's *Forfeiture Guidelines*.⁵ Section 503(b) of the Act requires that, in examining NATC's response, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Although there is precedent for reducing or rescinding a forfeiture based on bankruptcy in certain circumstances⁷, we do not believe that NATC has justified a reduction or rescission in this case because NATC failed to respond to the extended deadline for responding to the *NAL*. In this regard, as stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. NATC did not provide any financial documentation in support of its request for rescission of the forfeiture and, therefore, we have no basis upon which to analyze its request based upon the effect of the bankruptcy on its ability to pay the proposed forfeiture.

5. Further, filing for bankruptcy does not preclude the Commission from issuing an order

⁴ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000) ("*NRO Order*"); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, 16 FCC Rcd 306 (2000) ("*NRO Recon. Order*").

⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80; *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Guidelines*") (codified at 47 C.F.R. § 1.80(b)(4) Note).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996) (forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject radio stations); *Interstate Savinds, Inc. d/b/a ISI Communications*, 12 FCC Rcd 2934 (CCB 1997) (forfeiture rescinded where trustee was appointed in Chapter 7 liquidation, removing violator from operating as a common carrier and from involvement in dissolution or distribution of assets. Requiring trustee to pay the forfeiture would diminish estate assets available to innocent creditors and serve no public purpose).

imposing a forfeiture on NATC for violating its rules.⁸ Here, we do not believe that NATC has justified a reduction or rescission in this case because it has not provided financial documentation for the Bureau's analysis and because, even though it filed bankruptcy, it retains control over its assets. *Friendship Cable of Texas, Inc.*, 17 FCC Rcd 8571 (EB 2002). Moreover, the Commission has ruled that a carrier's bankruptcy does not excuse its obligation to comply with the Act and the Commission's rules and that enforcement action will be taken where appropriate, particularly where the carrier continues operation during the Chapter 11 reorganization process.⁹

6. Furthermore, we have information indicating that NATC also apparently failed to file the NRUF report due February 1, 2001. When an NAL has been issued and the recipient appears to continue to engage in the same rule violation, we are not inclined to rescind or adjust the forfeiture amount even where the recipient has filed for bankruptcy protection.¹⁰ Accordingly, we affirm the forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that North American Telecommunications Corporation SHALL FORFEIT to the United States Government the sum of six thousand dollars (\$6,000) for willfully violating the Commission's rules that require U.S. carriers to report actual and forecast number usage. For collection, the Commission will file a proof of claim at the appropriate time in North American Telecommunications Corporation's bankruptcy action.¹¹

8. Payment of the forfeiture may be made by mailing a check or money order, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, within 30 days of the release of this Forfeiture Order.¹² The payment must include the FCC Registration number (FRN) and the NAL/Acct. No. referenced above. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

⁸ See 11 U.S.C. § 362(b)(4). See *Coleman Enterprises, Inc.*, 16 FCC Rcd 24385, 24389 n. 28 (2000)(*Forfeiture Order*) (filing for bankruptcy does not preclude the Commission from issuing an *Order of Forfeiture*). See also *United States of America v. Commonwealth Companies, Inc.*, 913 F.2d 518 (8th Cir. 1990).

⁹ *Coleman Enterprises, Inc.*, 16 FCC Rcd 10016, 10019-21 (2001)(*Order on Reconsideration*), citing *Interstate Savings, Inc.*, 12 FCC Rcd 2934 (1997).

¹⁰ *William Flipppo*, 15 FCC Rcd 23340 (EB 2000)(*Forfeiture Order*), citing *J.C. Maxwell Broadcasting Group, Inc (WMPR(FM))*, 8 FCC Rcd 784 (1993).

¹¹ See *United States v. Commonwealth Companies, Inc.*, 913 F. 2d 518, 523 (8th Cir. 1990).

¹² See 47 C.F.R. § 1.80(h).

¹³ See 47 C.F.R. § 1.1914.

9. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail/Return Receipt Requested, to Fred E. Horton, Jr., Esq., North American Telecommunications Corporation, 875 Merrick Avenue, Westbury, NY 11590.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau